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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054206
Party	Defendant NMC Logistics International Co., Ltd.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NMC LOGISTICS INTERNATIONAL,
INC.

Petitioner,

v.

NMC LOGISTICS INTERNATIONAL ,
CO. LTD.

Registrant.

Cancellation No.:
92054206

Registration No.:
3,973,184

**REGISTRANT NMC LOGISTICS INTERNATIONAL, CO. LTD'S MOTION FOR
JUDGMENT FOR PETITIONER'S FAILURE TO PROVE CASE**

Pursuant to 37 C.F.R. § 2. 132(a), NMC Logistics International, Co. Ltd. ("Registrant"), by and through counsel, hereby moves for dismissal, with prejudice, of Cancellation No. 92054206, on the grounds that Petitioner, NMC Logistics International, Inc, ("Petitioner") has failed to prosecute.

The time for Petitioner to take testimony has expired and Petitioner has not taken testimony or offered any other evidence in this proceeding.

FACTS

By Order of the Board, dated November 9, 2011, after granting the Party's Stipulated Motion For Extension of Time to Serve Initial Disclosures, the Board reset trial dates in the above-mentioned matter. On May 13, 2012 Plaintiff's Pretrial Disclosures were due. On June 27, 2012, Plaintiff's thirty (30) day trial period ended.

Registrant submits that the instant Motion is well-founded, since Petitioner has submitted no testimony or offered other evidence in this cancellation. Moreover, this Motion is timely filed before the opening of Registrant's Pretrial Disclosures are due July 12, 2012 and Registrant's testimony period ends on August 26, 2012 in accordance with 37 C.F.R. § 2. 132(c).

ARGUMENT

Petitioner initiated this cancelation, and it was therefore Petitioner's responsibility to move the case forward pursuant to the trial schedule, but Petitioner has failed to do so. See *Atlanta-Fulton County Zoo, Inc. v. DePalma*, 45 USPQ2d 1858, 1860 (TTAB 1998). In the instant proceeding, Petitioner failed to submit any Pretrial Disclosures and provide any testimony or evidence during Petitioner's testimony period.

Trademark Rule 2.121(e) provides, in pertinent part,

[n]o later than fifteen days prior to the opening of each testimony period ... the party scheduled to present evidence must disclose the name and, if not previously provided, the telephone number and address of each witness from whom it intends to take testimony, or may take testimony if the need arises, general identifying information about the witness, such as relationship to any party, including job title if employed by a party, or, if neither a party nor related to a party, occupation and job title, a general summary or list of subjects on which the witness is expected to testify, and a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony of the witness ...

Petitioner is well aware of the deadlines in this proceeding and did not provide any such witness(es).

More importantly, Petitioner has failed to provide any testimony or other evidence during its testimony period which closed on June 27, 2012. As stated by the Board, "[d]ismissal of a proceeding is appropriate under Trademark Rule 2.132(a) where the plaintiff's time for taking testimony has expired and the plaintiff has not taken any testimony or offered any evidence." *Procyon Pharm., Inc. v. Provyon Biopharma, Inc.*, 61 USPQ2d 1542, 1544 (TTAB 2001). Registrant submits that dismissal is appropriate under the circumstances.

Accordingly, Registrant submits that the Board should grant Registrant's Motion for Judgment for Petitioner's Failure to Prove Case, with prejudice, under 37 C.F.R. § 2.132(a).

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CONCLUSION

Therefore, in view of the failure of Petitioner to take any testimony or offer any evidence in this cancelation proceeding, Registrant hereby requests that the Board dismiss this cancelation proceeding, with prejudice, pursuant to 37 C.F.R. § 2. 132(a).

Dated: June 28, 2012

/s/Reid Dammann
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Counsel for Registrant
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the above-identified NMC Logistics International, Co. LTD's **MOTION FOR JUDGMENT FOR PETITIONER'S FAILURE TO PROVE CASE** upon Petitioner's attorney of record:

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June 28, 2012



REID E. DAMMANN, ESQ.